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OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-8403

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**DEC 29 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Shirakawa et al. :  
Application No. 10/807,052 : DECISION ON PETITION  
Filed: March 22, 2004 :  
Attorney Docket No. P/1596-74 :

This is a decision on the "PETITION UNDER 37 C.F.R. 1.10 AND 1.182 FOR CORRECTED FILING RECEIPT," filed October 18, 2004, requesting that the above-identified application be accorded a filing date of March 22, 2004, rather than the presently accorded filing date of March 23, 2004.

On July 30, 2004, applicants previously attempted to correct the filing date by way of a request for corrected filing receipt. By letter mailed August 26, 2004, petitioners were advised that relief was properly sought by petition pursuant to 37 CFR 1.10, and such a petition requires a copy of the Express Mail mailing label.

In support of the petition, applicants submit a copy of the official notation by the USPS obtained from the official USPS website, indicating that the "Express Mail" package, having the label EV34 3682 980US, had "ACCEPTANCE, March 22, 2004, 8:28 pm, NEW YORK, NY 10199" and was "ENROUTE, March 22, 2004, 10:29 pm," and was delivered to the Patent Office at 9:09 am on March 24, 2004.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(Emphasis supplied).

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition was filed promptly within the meaning of § 1.10(c)(1). A review of the application papers presently accorded a filing date of March 24, 2004, reveals that "Express Mail" mailing label No. EV34 3682 980US was placed on the application transmittal prior to the original mailing.

37 CFR § 1.10(c)(3) requires both a true copy of the "Express Mail" mailing label showing the date-in and any other official notation by the USPS relied on to show the date of deposit. Thus, the Office requirement for a true copy of the "Express Mail" mailing label was appropriate. However, petitioner has not provided a copy of the "Express Mail" mailing label, as requested and as required under § 1.10(c)(3).

Nonetheless, the USPS prepared "Track & Confirm" record states that the package was "ENROUTE, March 22, 2004, 10:29 pm," and thereby, corroborates petitioner's claim of deposit on March 22, 2004. Furthermore, the evidence does not contravene a conclusion that the "Express Mail" package was sent via the USPS Express Mail "Post Office to Addressee" service as required by 37 CFR 1.10. (The Express Mail mailing label would show whether the package was sent via "Post Office to Addressee" service.)

**Petitioner must advise the Office if the "Express Mail" package was not sent via "Post Office to Addressee" service as compliance with § 1.10 would not then be found.**

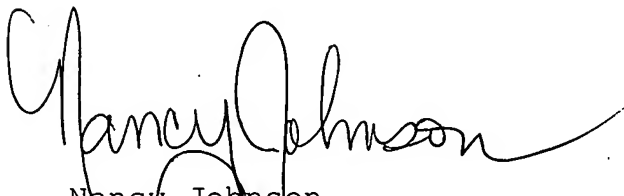
Given the evidence, the requirement for a copy of the "Express Mail" mailing label is *sua sponte* waived.

In view thereof, the petition is GRANTED.

No petition fee is required and none has been charged.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for correction of the filing date to March 22, 2004 and issuance of a corrected filing receipt.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions